

Minutes of the  
Nebraska Water Policy Task Force Meeting  
December 22, 2005  
Sandhills Convention Center, North Platte, Nebraska

Attendance:

Task Force Members

Brian Barels	Ann Bleed	Jack Maddox
Eugene Glock	Gary Mader	Jim Meisner
Clint Johannes	Nelson Trambly	Don Suda
Lloyd Nellor	Steve Huggenberger	Richard Uhrenholdt
Dave Cookson	Dave Sands	Gary Thayer
Dick Mercer	Al Schmidt	Dennis Strauch
Ron Bishop	Jim Nelson	Pat Heath
Tom Schwarz	J. Duane Sugden	Claude Cappel
Dan Smith	Lumir Jedlicka	Harry Howell
Don Kraus	John Turnbull	Ken Schilz
Jay Rempe	Nancy Eberle	Galen Frenzen
Curt Friesen	Lorrie Benson	
Lyle Heinrichs	Sen. Ed Schrock	

Others

Jonathan Bartsch	Jim Cannia	Lyndon Vogt
Ann Diers	Dean Edison	Lynn Webster
Tina Kurtz	Russ Callan	John Thorburn
Jasper Fanning	Butch Koehlmoos	Bernie Ferhinger
Jodi Gittens	Steve Smith	Lash Chaffin
Jordan Ball	Justin Lavene	Kent Miller
Mike Clements	Dave Hendee	Senator Joel Johnson
Matt Harrison	Keith Rexroth	Brad Edgerton
Jason Kunkel	David Kracman	

Agenda Review, Introductions, and Review of Minutes

Jonathan Bartsch called the meeting to order at 10:14 a.m. The notice of the meeting was published in the Omaha World-Herald on December 15. Task Force members and others present introduced themselves. A moment of silence was observed for Clayton Lukow. The minutes from the November 18, 2005 Task Force meeting were approved.

Bartsch reviewed the agenda noting that there were four substantive pieces to the agenda: the municipal subcommittee report, the funding subcommittee report (which Bartsch noted is the most challenging issue facing the Task Force), the instream flow subcommittee report and the fully appropriated determinations. Also on the agenda was the surface water/ground water subcommittee report, determination of when the next meeting will be, and public comments.

## Municipal Subcommittee Report and Recommendations

Lash Chaffin handed out the latest version of the revised municipal subcommittee proposal and gave an overview of it. He noted that an important issue concerns the per capita amount for domestic use in municipalities in the western part of the state (300 gallons per capita per day (gpcd)) versus the eastern part of the state (250 gpcd).

Jonathan Bartsch asked for general comments regarding the proposal Chaffin reviewed. There was discussion related to several issues in the proposal, primarily: 1) municipal conservation plan requirements/municipal conservation activities, 2) what “governmental” uses encompassed, 3) the gallon per capita per day amounts in the proposal, 4) how they relate to historic use, 5) what those amounts encompass, 6) whether those amounts are appropriate; 7) and what entity will get credit for land taken out of production. Edits were made to the proposed document, based on the discussion, to reflect the changes the group wished to see made.

After further discussion concerning the gallons per capita per day amounts, Bartsch asked for thumbs up, down, or sideways as to whether the Task Force could live with 250 gpcd for western towns. There were thumbs up for this recommendation with the exception of Pat Heath. Heath said that restricting use is an issue with these communities [western towns] because they have to compete with other areas outside of the state. Ron Bishop said that this amount is not a limit for the communities; what this proposal is saying is that the NRD will pick up the water use for first 20 years and if the municipality needs more water than that, the municipality will be responsible for the offset. Ann Bleed mentioned that if the NRD chose to pick up more than the first 20 years, they could do that. Heath noted that he will not block the recommendation, but he prefers 300 gallons per capita per day.

The proposed document with all of the changes made during the discussion period was reviewed by the Task Force. Bartsch asked for a show of thumbs regarding the proposal. The proposal was unanimously supported with it noted that Heath prefers 300 gpcd. The proposal was to be forwarded. Senator Schrock asked if the group wanted him to carry this legislation this session and make it a Committee bill. He also asked if the municipalities would find a Senator to prioritize it. Chaffin mentioned that the League will work with Senator Schrock. Dave Cookson asked if the Task Force was comfortable with Cookson, Justin Lavine, DNR, and the League working with Senator Schrock on the bill. The group indicated that they were comfortable with this.

## Funding Subcommittee Recommendations and Next Steps

Gene Glock reported to the Task Force on the Funding Subcommittee recommendations. He said that there are two problems, the long range problem of meeting the requirements of LB 962 and the immediate problem of meeting the Republican River Compact requirements. He said that the state can’t delay meeting the long range problem forever, but the Republican River needs to be addressed now. He noted that the Task Force has

made a start on this by already approving a request of \$3.5 million for administration (\$1.5 million for DNR and \$2 million for NRD assistance) along with an additional 1¢ levy authority to raise \$4 million in local NRD funds. In addition, the Task Force has already recommended an additional 2¢ (additional to the abovementioned proposed 1¢ levy) levy authority for the NRDs in the overappropriated or Compact areas.

Glock reported that one of the subcommittee recommendations is for \$2 million dollars of additional funding for data collection, technical studies, and modeling. It was noted that there are definite needs in the Platte and Republican Basins for finding a balance between use and supply. Glock said that the subcommittee believes that finding a balance by using only regulations is too severe so a combination of incentives, other programs, and regulations should be used. The subcommittee is not making recommendations on what should be done to get into balance, as the NRDs and DNR need to work together to do this. As for funding, he indicated the subcommittee recommends that the NRDs be responsible for 10% of the needs and the State be responsible for 90% in addition to continuing to work with the Federal Government for funding. He said they also recommend specific funding for the Republican River Basin in the next budget year as well as specific funding for the Platte River Basin.

Glock mentioned that funding needs will continue for the foreseeable future. He noted that the Legislature needs to work with partners to create a dedicated source of funding for water resources. The subcommittee supports a dedicated source of funding through the sales tax. Glock also mentioned other possible funding sources such as the general fund, equitable fees on water use, annual fees on property records, tax credits on conservation easements, redirecting hydropower tax receipts, and Environmental Trust Fund signature projects.

Senator Schrock asked what the total bill will be. Glock said that a total of \$7.5 million would go through DNR - \$2 million of this would be for the technical studies. So for the state there would be a total of \$5.5 million plus what needs to be done to meet the immediate needs of the Republican River Basin and what needs to be done for the overappropriated area. The NRDs would raise \$4 million. Ann Bleed noted that \$2 million of the \$5.5 million will need to be matched by the NRDs. Senator Schrock said that it will be two years before money from the additional 3¢ levy will be realized. There was a discussion concerning the \$2 million for studies and what the role of UNL is concerning future studies.

Steve Huggenburger asked what happens with the Task Force funding recommendations. Bartsch responded that they will go to the Director of DNR, Ann Bleed. Bleed said that she will talk to the Governor and tell him what the Task Force funding recommendations are. The budget for the Department will have to get the Governor's okay. The Task Force will have to carry forward their recommendation to the Legislature. Glock mentioned that in order to get any of the recommended funding, all of the members are going to have to be involved in arm twisting and educating the Senators about how badly we need this money. Senator Schrock noted that the Governor makes recommendations but can't introduce legislation. Senator Schrock is willing to introduce the

recommendation of the Task Force on his own. The funding bill will go to the Appropriations Committee not the Natural Resources Committee.

Bartsch asked for other comments or questions related to funding. Gary Thayer asked Senator Schrock what the odds are of getting the recommended funding. Senator Schrock responded that he thinks the Task Force put forth a good faith effort here, but that they shouldn't expect to get everything they want. Jay Rempe said that the group has to be realistic. He said the key is that the Legislature wants to know how money is going to be used and what good will come of the money. Dan Smith mentioned that the Task Force created LB 962 and now it needs money, so if we are not going to pay for it, then we should kill it. He mentioned that funding for Republican River issues are separate from LB 962 funding. He indicated that in order to ensure that the process goes forward and that it is done right, funding is necessary. He also said that individuals within the group need to visit with local Senators and support the Task Force recommendations.

Bartsch asked for a show of thumbs regarding the Funding Subcommittee's recommendation. There was Task Force agreement regarding the recommendation. Glock once again mentioned that for the Appropriations Committee it is important to know what amount is needed, if it can all be used, and what it is needed for.

Mike Clements said that he is concerned about an equitable fee on all water uses, leaving it too open-ended, and the path that might lead us down. He doesn't want a huge burden put on irrigators.

There was a discussion of what the Task Force can do to support this recommendation. Cookson said that it is a good strategy to talk to the Appropriations Committee before talking to anyone else.

#### Instream Flow Rights and the Determination of Fully Appropriated Basins

Bartsch turned the meeting over to Ron Bishop. Bishop said that the subcommittee has had a number of meetings on the instream flow appropriations on the Platte River. He said that when they were granted, they could not be used to regulate ground water. The amount applied for was large since the law only allowed for flows that were there 20% of the time. LB 962 changed the law and allowed for instream flows to be looked at like other surface water appropriations for making the fully appropriated determinations. He indicated the fully appropriated rule says that the Department will look at junior appropriators to determine if certain frequencies of deliveries are being met. He said the instream flows cause administration for junior appropriators and then DNR looks at whether junior appropriators are meeting 85%/65% of the crop irrigation requirement. As a result, a basin could be fully appropriated because of the instream flows. Bishop reported there is a proposal to treat instream flows like other surface water rights, i.e. use the 85%/65% rule. He indicated the Game and Parks Commission and other environmental groups looked at that proposal as reducing the instream flow rights. Bishop said that he is not sure that it would reduce the amount of the rights.

There was considerable discussion in the committee and a suggestion from Ann Bleed to change the method by which a basin is determined to be fully appropriated instead of changing the amounts [85%/65%]. She indicated the Department should look at how much water was there [percentage of crop irrigation requirement] when it [junior right] was granted and then make the fully appropriated determination based on that amount instead of the 85%/65%. She noted this suggestion seemed to satisfy most of the people on the subcommittee. This suggestion would keep the instream flows whole as they would still be protected for the same amounts and frequency as when they were granted, but a basin would not be determined to be fully appropriated because of these amounts. The Department can make this change by rule. Bleed emphasized that this does not change the instream flow law or how it is administered, just how we look at junior irrigators for the fully appropriated determinations. She is not sure the Game and Parks Commission received the actual language of the suggestion last week, but she thinks that they would be okay with this language. Bishop said that due to this potential change in rule, there is no legislation that is recommended at this time.

Al Schmidt asked Bleed if she is comfortable changing by rule how we approach an appropriation granted under different laws. Bleed said that this doesn't change anything about how a surface water right is granted or administered, just how the Department of Natural Resources determine fully appropriated basins.

The Department would look at what percentage was available to the junior appropriator when the appropriation was granted and see if that has been eroded. They would basically redo the 85%/65% test. They would first look at whether the junior right is meeting 85%/65% of the crop irrigation requirement; if it meets it fine, if not, look at the percentage of time it could have been met when it was granted to see if it has been eroded. Lloyd Nellor said that he was in full agreement with what has been said so far, but that he was still concerned about the instream flows. He said he has a problem if the rule is going to say instream flows have to be there 85%/65%. Bleed said that the 85%/65% is a crop irrigation requirement so it is not being used for instream flows. Jim Nelson mentioned that if you have a junior right you can't use it in dry weather. Bartsch asked for other concerns about this proposal. Steve Huggenberger said that he could support the Department to start the rule making process on this proposal. Bleed said that the Department will get language out to people so we can address concerns before going to a hearing on the amendments. Bartsch said that the language for this proposal will be included in the meeting materials mailing. Bleed said that the language will be e-mailed out.

#### Surface Water and Ground Water Subcommittee Report

Don Kraus reported on a change that he and Dennis Strauch are working on. Ann Bleed reported on two things that are being worked on – changes to the law and expedited transfer rules. She said the subcommittee is willing to share transfer rules with the Task Force if they were interested. There was a handout on the changes to the statute that the subcommittee was working on relating to adjudications.

Don Kraus said that what they are working on is a clarification of the five-year period concerning what would happen to the water right. He said this clarification would initiate the five-year period. The second change is to clarify the area served by the irrigation district. Dennis Strauch said that most districts have boundaries so this change is to clarify. The third change would clarify that transfers could be pursuant to the map transfer statutes. This would apply to districts using the map transfer. A further change would require the Department to issue an order of cancellation within 60 days of receipt of a relinquishment, to get orders out of the Department in a timely manner. There was a question on whether the point of diversion has to stay the same and how a voluntary relinquishment is done. Strauch said that there is a process for that; the district has to sign voluntary relinquishment forms. Bleed said that if the district has done a map transfer then the district just has to let the Department know. She indicated voluntary relinquishment can be part of a map transfer.

Bartsch asked for any other comments. Kraus said that the subcommittee is looking for a recommendation from the Task Force to go into the clean-up bill. Bleed said that from DNR's point of view this doesn't change anything you can do today; just today you have to do it in three or four steps and these changes would allow one step but the result would be the same. Bartsch asked for a show of thumbs for the subcommittee's recommendation. All thumbs were up so the recommendation goes forward.

Dan Smith asked if that was all that is coming out of the surface water subcommittee. Kraus said that they are still working on Department rule issues. Bleed said there is a question as to whether the Task Force wants to get involved in the Department's rules. Gene Glock said that he doesn't want to know about the rules issues. There was general agreement on this point.

#### Next Steps and Future Meetings

It was decided that the next meeting would be February 8, 2006, in Lincoln, from 9:30 a.m. to 3:00 p.m. so that the Task Force members would get a chance to interact with the Senators. One of the agenda items will be where the task force is with the Legislature. Bleed mentioned that it would be good for the Task Force members to go to the Water Roundtable that morning.

Senator Schrock asked whether the Task Force should take up Central Nebraska Public Power and Irrigation District's proposal for the panhandle. Bishop said that it would be premature for the Task Force to be involved as they are just getting started in dealing with those conflicts so we need to let the process happen. Senator Schrock asked what the process is. Bishop said that they are just starting the integrated management planning process. The group out there should be able to decide whether to include it in their integrated management planning process or not. The North Platte NRD Stakeholder group needs to be given a chance to look at that proposal and give them an opportunity to proceed before the Task Force gets involved. Huggenburger said that the charge to the Task Force is not to act as adjudicators for disputes. Bartsch asked what the Task Force's role should be in this issue. Senator Schrock said that the Task Force should be briefed

as part of educating the group on what is going on with integrated management plans. Jay Rempe said that it would be good to hear what is going on in basins currently in the integrated management planning process and what is going on with the fully appropriated report.

#### Public Comment

Bernie Ferhinger spoke regarding the municipal subcommittee report. He reported that he is trying to get his mind around how having 20 years of growth with no offset will get supply and use back in balance. He said he can only imagine that will have to come from farmers. He indicated that it will probably result in lawsuits or the State will have to buy up the water. He noted that he thinks that entities who need water can afford it as an upfront capital expense, but he is uncertain how to rectify it with the overappropriated area.

#### Adjournment

The meeting adjourned at 2:48 p.m.